

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

IN RE: BAIR HUGGER FORCED AIR WARMING PRODUCT LIABILITY LITIGATION MDL No.: 15-md-02666 (JNE/FLN)

This Document Relates To:

ILA THORNTON,
Plaintiff,
Civil Action No.: 17-CV-03834-JNE-FLN

PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO DISMISS

NOW COMES Plaintiff, Ila Thornton, identified in Defendants' Motion to Dismiss for Failure to Comply with Pretrial Order No. 14 [Dkt. 1124], and by and through undersigned counsel submits this, her Response to Defendants' Motion to Dismiss, and would respectively show the Court the following:

1. In August of 2015, Mrs. Ila Thornton contacted undersigned counsel regarding an infection and subsequent treatment that she experienced due to the use of a Bair Hugger patient warming device during an orthopedic surgery.
2. Counsel worked to obtain medical records and billing records to move forward with the case.
3. On August 18, 2017, counsel filed the current action to comply with what was identified as the applicable statute of limitations deadline for the relevant claim.
4. On August 23, 2017, Mr. Terry Thornton, husband to Mrs. Thornton, reported to counsel that Mrs. Thornton is permanently residing in a nursing home.

5. By November 9, 2017, all personal information from Mr. and Mrs. Thornton had been received, and a substantially complete Plaintiff Fact Sheet was submitted soon after.
6. An amended Plaintiff Fact Sheet which addresses the alleged deficiencies was submitted by counsel through Blade on March 7, 2018. A verification form was also submitted on that date using a copy of Mrs. Thornton's signature, which counsel has authority to use through the Power of Attorney provision in the representation agreement that Mrs. Thornton had signed and for which counsel had obtained Mrs. Thornton's express permission to use.
7. Counsel are still awaiting a new signed verification form, which has not been received from Mrs. Thornton to date. Counsel is currently working with Mr. Thornton to coordinate bringing a form to his wife at the nursing home to have her sign and to have it returned to counsel.
8. Counsel expect to have a new signed verification form submitted prior to the hearing on Defendants' Motion on March 15, 2018.
9. In the event that counsel are unable to submit a new signed verification form prior to the hearing date, counsel would request an extension to allow for time to obtain the new signed verification form from Mrs. Thornton.

Accordingly, undersigned counsel request that the current action not be dismissed with prejudice and that Mrs. Thornton be given an additional thirty (30) days to submit a new verification form to cure any alleged deficiencies with the Plaintiff Fact Sheet and to continue the case.

Dated: March 8, 2018

KENNEDY HODGES, LLP

By: /s/ David W. Hodges
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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

This is to certify that on March 8, 2018 a copy of the forgoing instrument was served on all parties via the Court's electronic filing system.

By: /s/ David W. Hodges
David W. Hodges